

## § 133.24

## 19 CFR Ch. I (4–1–05 Edition)

(d) *Relief from detention of gray market articles.* Gray market goods subject to the restrictions of this section shall be detained for 30 days from the date on which the goods are presented for Customs examination, to permit the importer to establish that any of the following exceptions, as well as the circumstances described above in § 133.22(c), are applicable:

(1) The trademark or trade name was applied under the authority of a foreign trademark or trade name owner who is the same as the U.S. owner, a parent or subsidiary of the U.S. owner, or a party otherwise subject to common ownership or control with the U.S. owner (in an instance covered by §§ 133.2(d) and 133.12(d) of this part); and/or

(2) For goods bearing a genuine mark applied under the authority of the U.S. owner, a parent or subsidiary of the U.S. owner, or a party otherwise subject to common ownership or control with the U.S. owner, that the merchandise as imported is not physically and materially different, as described in § 133.2(e), from articles authorized by the U.S. owner for importation or sale in the United States; or

(3) Where goods are detained for violation of § 133.23(a)(3), as physically and materially different from the articles authorized by the U.S. trademark owner for importation or sale in the U.S., a label in compliance with § 133.23(b) is applied to the goods.

(e) *Release of detained articles.* Articles detained in accordance with § 133.25 may be released to the importer during the 30-day period of detention if any of the circumstances allowing exemption from trademark restriction set forth in § 133.22(c) of this subpart or in paragraph (d) of this section are established.

(f) *Seizure.* If the importer has not obtained release of detained articles within the 30-day period of detention, the merchandise shall be seized and forfeiture proceedings instituted. The importer shall be notified of the seizure and liability of forfeiture and his right to petition for relief in accordance with the provisions of part 171 of this chapter.

### § 133.24 Restrictions on articles accompanying importer and mail importations.

(a) *Detention.* Articles accompanying an importer and mail importations subject to the restrictions of §§ 133.22 and 133.23 shall be detained for 30 days from the date of notice that such restrictions apply, to permit the establishment of whether any of the circumstances described in § 133.22(c) or 133.23(d) are applicable.

(b) *Notice of detention.* Notice of detention shall be given in the following manner:

(1) *Articles accompanying importer.* When the articles are carried as accompanying baggage or on the person of persons arriving in the United States, the Customs inspector shall orally advise the importer that the articles are subject to detention.

(2) *Mail importations.* When the articles arrive by mail in noncommercial shipments, or in commercial shipments valued at \$250 or less, notice of the detention shall be given on Customs Form 8.

(c) *Release of detained articles—(1) General.* Articles detained in accordance with paragraph (a) of this section may be released to the importer during the 30-day period of detention if any of the circumstances allowing exemption from trademark or trade name restriction(s) set forth in § 133.22(c) or 133.23(d) of this subpart are established.

(2) *Articles accompanying importer.* Articles arriving as accompanying baggage or on the person of the importer may be exported or destroyed under Customs supervision at the request of the importer, or may be released if:

(i) The importer removes or obliterates the marks in a manner acceptable to the Customs officer at the time of examination of the articles; or

(ii) The request of the importer to obtain skillful removal of the marks is granted by the port director under such conditions as he may deem necessary, and upon return of the article to Customs for verification, the marks are found to be satisfactorily removed.

(3) *Mail importations.* Articles arriving by mail in noncommercial shipments, or in commercial shipments valued at

\$250 or less, may be exported or destroyed at the request of the addressee or may be released if:

(i) The addressee appears in person at the appropriate Customs office and at that time removes or obliterates the marks in a manner acceptable to the Customs officer; or

(ii) The request of the addressee appearing in person to obtain skillful removal of the marks is granted by the port director under such conditions as he may deem necessary, and upon return of the article to Customs for verification, the marks are found to be satisfactorily removed.

(d) *Seizure.* If the importer has not obtained release of detained articles within the 30-day period of detention, the merchandise shall be seized and forfeiture proceedings instituted. The importer shall be promptly notified of the seizure and liability to forfeiture and his right to petition for relief in accordance with the provisions of part 171 of this chapter.

**§ 133.25 Procedure on detention of articles subject to restriction.**

(a) *In general.* Articles subject to the restrictions of §§133.22 and 133.23 shall be detained for 30 days from the date on which the merchandise is presented for Customs examination. The importer shall be notified of the decision to detain within 5 days of the decision that such restrictions apply. The importer may, during the 30-day period, establish that any of the circumstances described in §133.22(c) or §133.23(d) are applicable. Extensions of the 30-day time period may be freely granted for good cause shown.

(b) *Notice of detention and disclosure of information.* From the time merchandise is presented for Customs examination until the time a notice of detention is issued, Customs may disclose to the owner of the trademark or trade name any of the following information in order to obtain assistance in determining whether an imported article bears an infringing trademark or trade name. Once a notice of detention is issued, Customs shall disclose to the owner of the trademark or trade name the following information, if available, within 30 days, excluding weekends and holidays, of the date of detention:

- (1) The date of importation;
- (2) The port of entry;
- (3) A description of the merchandise;
- (4) The quantity involved; and
- (5) The country of origin of the merchandise.

(c) *Samples available to the trademark or trade name owner.* At any time following presentation of the merchandise for Customs examination, but prior to seizure, Customs may provide a sample of the suspect merchandise to the owner of the trademark or trade name for examination or testing to assist in determining whether the article imported bears an infringing trademark or trade name. To obtain a sample under this section, the trademark/trade name owner must furnish Customs a bond in the form and amount specified by the port director, conditioned to hold the United States, its officers and employees, and the importer or owner of the imported article harmless from any loss or damage resulting from the furnishing of a sample by Customs to the trademark owner. Customs may demand the return of the sample at any time. The owner must return the sample to Customs upon demand or at the conclusion of the examination or testing. In the event that the sample is damaged, destroyed, or lost while in the possession of the trademark or trade name owner, the owner shall, in lieu of return of the sample, certify to Customs that: “The sample described as [insert description] and provided pursuant to 19 CFR 133.25(c) was (damaged/destroyed/lost) during examination or testing for trademark infringement.”

(d) *Form of notice.* Notice of detention of articles found subject to the restrictions of §133.22 or §133.23 shall be given the importer in writing.

**§ 133.26 Demand for redelivery of released merchandise.**

If it is determined that merchandise which has been released from Customs custody is subject to the restrictions of §133.22 or §133.23 of this subpart, the port director shall promptly make demand for the redelivery of the merchandise under the terms of the bond on Customs Form 301, containing the bond conditions set forth in §113.62 of this chapter, in accordance with